

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

) PP Docket No. 93-253
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Implementation of Section 309(j)
of the Communications Act -
Competitive Bidding

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TO THE COMMISSION

SEP 12 1994

COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Minority Media and Telecommunications Council ("MMTC") respectfully submits these Comments in response to the Further Notice of Proposed Rulemaking, FCC 94-198 (released August 2, 1994) ("Further Notice").

MMTC favors geographic service area partitioning for minority service providers.^{1/} Such partitioning is justified for much the same reasons as partitioning for rural telephone companies. Fifth Report and Order, FCC 94-178 (released July 15, 1994), ¶¶148-153.

For several decades until the 1980's, POTS and custom calling services typically were delivered to geographically distinct, segregated minority communities considerably later than such services were delivered to majority communities.

These service initiation delays were generally not justified by economic considerations, but were often driven instead by race prejudice. These delays deprived members of minority groups of access to the levels of telecommunications capability generally available elsewhere.

^{1/} The Further Notice also sought comments on partitioning for female owned service providers. MMTC does not purport to speak for that constituency, and consequently offers no comments on that issue.

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This had an especially harmful effect on minority children. They fell years behind their white counterparts in their exposure to state of the art telecommunications in the home, and consequently were disadvantaged in their adaptability to innovative technology when they entered the workforce.

Several civil rights organizations have expressed concern that this pattern could be repeated in the development of interactive services such as video dialtone. Certainly the Commission should do all it can to avoid second class citizenship in the delivery of PCS.

One way to increase the likelihood that minority communities receive PCS service rapidly is to allow partitioning on the rural service model articulated in the Fifth Report and Order. The use of established geopolitical boundaries, as required of rural providers, might not always be possible, because the promoters racial and economic segregation did not always respect geopolitical boundaries.^{2/} However, those applying for partitioning should be expected to propound rational and readily ascertainable alternative areas (e.g., census tracts or local telephone company service areas) as the basis for their proposed partitions.^{3/}

^{2/} Nonetheless, the Commission "recognize[d] that rural telephone companies will require some flexibility in fashioning the areas in which they will receive partitioned licenses, so we do not adopt a strict rule concerning the reasonableness of the partitioned area." Fifth Report and Order, ¶151.

^{3/} That is all the Commission required of the Bell System and other local service providers when they first offered local telephone service. At that time when minorities were completely frozen out of ownership opportunities. Minority new entrants today should hardly be afforded less flexibility than nonminority new entrants received yesterday.

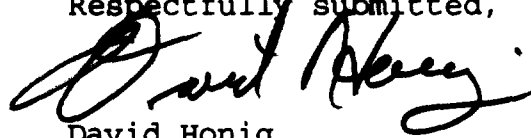
Flexibility for partitioning can help service providers tailor their services to the communities they are most highly motivated to target. Such flexibility would go a long way toward assisting minority entrepreneurs in obtaining attractive financing for their ventures and in ultimately becoming successful service providers.^{4/}

The Further Notice seeks comment on the appropriate length of time, after initial PCS licensing, before which partitioning may occur. In the broadcast field, a too-short time limit for sale of a construction permit can lead to abuse by applicants who never intended to construct. See Bechtel v. FCC, 10 F3d 875 (D.C. Cir. 1993). That is less likely to be the case for PCS, since all auction winners will still face formidable construction requirements even after partitioning. Indeed, PCS construction costs are not easily ascertainable. Even the Commission has had difficulty predicting the market value of its bidding opportunities.

Consequently, minority PCS pioneers should be granted considerable flexibility in the timing of their partitioning requests. If a partitioning application is filed within one year of a grant, it might be appropriate to require a special public interest showing which emphasizes how partitioning will provide rapid service to traditionally underserved consumers.

^{4/} See Report of the FCC Small Business Advisory Committee Regarding General Docket 90-314 (September 15, 1993) at 3 et seq., documenting the financial barriers faced by minorities and women in the telecommunications industry.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Honig". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

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